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IN THE

Supreme Court of the United States

October Term, 1968
No. 203

WILLIAM E. THORESEN, III,
Petitioner,

vs.

STATE OF MAINE,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Maine.

ELIOT B. FELDMAN,
6505 Wilshire Boulevard,
Los Angeles, Calif. 90048,

MELVIN W. MILLER,
9601 Wilshire Boulevard,
Beverly Hills, Calif. 90210,
Attorneys for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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STATE OF MAINE,

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Petition for a Writ of Certiorari to the Supreme Court of Maine.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Maine, entered in the above-entitled case on March 18, 1968.

Jurisdiction.

This Court has jurisdiction under Title 28, Sec. 1257, U.S.C. The matter was instituted in 1967 as an original proceeding in the Superior Court of the State of Maine by way of a petition for post-conviction relief. Therein Petitioner alleged federal and state constitutional violations in his 1959 Maine conviction of a crime punishable by imprisonment for more than one year and that said conviction was then the basis for a pending federal indictment. The Court dismissed the petition on its face, holding that post-conviction relief was not available because Petitioner had served his sentence. Petitioner's appeal to the Maine Supreme Court was denied for the same reason.

Question Presented.

Whether the State of Maine is required by the Federal Constitution, under the circumstances set forth herein, to provide a post-conviction process for hearing and determining claims that a felony-type conviction violated the Federal and Maine Constitutions, even though the sentence therefor had been completely served.

Statement.

Petitioner, in September of 1959, when 21 years of age, was convicted, upon a plea of guilty, in the State of Maine, of larceny of six pictures in the aggregate value of $150.00. In September of 1961, the sentence therefor, consisting of probation, was completely served. In October, 1967, Petitioner filed a petition in the Superior Court in Maine seeking post-conviction relief to vacate said plea and conviction. He claimed therein that said conviction was based on numerous violations of the Constitutions of Maine and the United States. Among such claims were that because of ineffective counsel and interference by the State with the attorney-client relationship he had been deprived of the effective assistance of counsel; that the plea was not voluntary; that the State had made misrepresentations including the value of goods taken by Petitioner; further, that in June of 1967, he was indicted under Title 15, U.S.C., Sec. 902(e), which proscribes shipping firearms in interstate commerce by persons who have been convicted of a crime punishable by imprisonment for more than one year; that the sole basis for said indictment was the aforementioned Maine conviction; and that he had only recently learned the true facts including the fact that the true value of the pictures taken

was approximately $26.00. The theft of property valued at less than $100.00 is punishable in Maine by imprisonment for not more than six months, whereas theft in excess of $100.00 is punishable by imprisonment for more than one year. Maine Revised Statutes Annotated, Sec. 2101.

In his Memorandum of Points and Authorities submitted to the Superior Court, Petitioner referred to *State v. Blackford Circuit Court,* 229 Ind. 3, 95 N.E. 2d 556 (1950) wherein the Indiana Supreme Court held that the five-year statute of limitations on its *coram nobis* statute violated the due process clause of the United States Constitution. A copy of said Memorandum of Points and Authorities is attached hereto as Appendix A.

The Superior Court, on December 4, 1967 per an Associate Justice of the Maine Supreme Court, sitting in the Superior Court, dismissed the petition on its face, holding that Petitioner was not entitled to post-conviction relief because he had completed his sentence, citing *Longway v. State,* 161 Me. 430, 231 A. 2d 519 (1965) and 14 Maine Revised Statutes Annotated, Sec. 5502. A copy of said decree is attached hereto as Appendix B. The latter statutory provision is annexed hereto as Appendix C. The intention of the Legislature, said the Court, was that said statute "should become the sole vehicle for post-conviction relief in criminal matters."

The Maine Supreme Court, on March 18, 1968, denied Petitioner's appeal in *Thoresen v. State,* stating that the Maine statute and the *Longway* case, *supra,* require current service of sentence as a prerequisite to post-conviction relief and that the "ab-

sence of any form of continuing restraint in the instant case is fatal to the Petitioner's claim." The opinion of the Supreme Court of Maine is reported at 239 A. 2d 654 (1968). It is attached as Appendix D hereto.

Petitioner's subsequent application for a Writ of Habeas Corpus in the Maine Federal District Court was dismissed because of the absence of restraint. A copy of the order of dismissal is attached hereto as Appendix E. The United States Court of Appeals, First Circuit, denied a certificate of probable cause on May 13, 1968, with an addendum on May 24, 1968, Misc. No. 263.

Petitioner's subsequent application for a Writ of Habeas Corpus in the Federal District Court, Northern District of California was denied for lack of jurisdiction. The Court of Appeals, Ninth Circuit denied, on May 28, 1968, an application for probable cause on appeal. Case No. 22919.

Trial is set for June 24, 1968, in Fresno, California, on a superseded federal indictment based on the aforementioned code section. The trial court has denied petitioner's motion for a pre-trial determination of his claim that the Maine conviction violated the Federal Constitution.

In addition, Petitioner, in March, 1968, was indicted by a Federal Grand Jury in the Southern District of New York on similar charges. Said indictment is currently pending.

Reason for Granting the Writ.

The decision of the Maine Supreme Court raises an important question with respect to the duty of a state to provide to one who has fully served his sentence, a post conviction process for the determination of a claim that his felony-type conviction was based on violations of the Federal Constitution. Certiorari should be granted so that this question may be determined.

A. States Are Required to Provide a Post-Conviction Process for Determining Federal Constitutional Violations.

In *Case v. Nebraska,* 381 U.S. 336, 14 L. Ed. 2d 422, 85 S. Ct. 1486 (1965), this Court had granted certiorari

> "to decide whether the Fourteenth Amendment requires that the states afford state prisoners some adequate corrective process for the hearing and determination of claims of violation of Federal Constitutional guarantees." "Happily, Nebraska in the interim has adopted just such a procedure thus obviating the necessity of our passing upon the question".

In *Foster v. Illinois,* 332 U.S. 134, 139 (1947), this Court said:

> "They (claims) must be raised by whatever procedure Illinois may provide, or, in default of relief by appropriate Illinois proceedings, *by a new claim of denial of due process for want of such relief.* See Mooney v. Holohan, 294 U.S. 103." (Emphasis supplied)

In *Young v. Ragen,* 337 U.S. 235, 93 L. Ed. 1333, 69 S. Ct. 1073, this Court articulated the principle that states must afford prisoners some "clearly defined method by which they must raise claims of denial of Federal rights." In *N.Y. ex. rel. Whitman v. Wilson,* 318 U.S. 688, 87 L. Ed. 1083, 63 S. Ct. 840 (1943) this Court noted that the post-conviction case of *Lyons v. Goldstein* (290 N.Y. 19) "rests in part on the requirement of the due process clause that a prisoner be granted a hearing on the merits of such contention. . . ." And see: *Frank v. Mangum,* 237 U.S. 309, 335, 59 L. Ed. 969, 35 S. Ct. 582; *Moore v. Dempsey,* 261 U.S. 86, 91, 67 L. Ed. 543, 43 S. Ct. 265; *Mooney v. Holohan,* 294 U.S. 103, 113, 79 L. Ed. 791, 55 S. Ct. 340; *Taylor v. Alabama,* 335 U.S. 252, 272, 92 L. Ed. 1935, 68 S. Ct. 1415.

B. Completion of Sentence Is No Reason to Insulate an Unconstitutional Conviction From Challenge.

Although the aforementioned cases involved prisoners in custody, it is submitted that it makes no difference, where constitutional rights are involved, whether the sentence has been served or not.

In *Fiswick v. United States,* 329 U.S. 211, 91 L. Ed. 196, 67 S. Ct. 224 (1946), involving the Federal Alien Registration Act, this Court held that service of sentence did not render the cause moot since the matter involved an alien who became subject to deportation because of the conviction.

In *United States v. Morgan,* 346 U.S. 502 (1954), this Court held that *coram nobis* was available in the Federal Courts although the federal sentence had been served before the commencement of proceedings to set

aside the conviction because the "results of the conviction may persist, subsequent convictions may carry heavier penalties, civil rights may be affected."

In April of this year this Court, in *Ginsberg v. New York*, ... U.S. ...., 20 L. Ed. 2d 195, n. 2 88 S. Ct. .... (1968) held that a state trial court's suspension of sentence, although its action had become irrevocable by lapse of the time prescribed by statute, did not render moot defendant's appeal from his state conviction (to the U.S. Supreme Court) where he has shown that under state law further penalties or disabilities can be imposed on him as a result of the judgment of conviction, such as the possibility of ineligibility for licensing under state and municipal laws regulating various lawful occupations.

In *Carafas v. La Vallee*, ... U.S. ...., 36 LW 4409, involving Federal habeas corpus for a state prisoner, this Court declared last month (May 20, 1968) that (36 LW 4409, 4410):

> "It is clear that petitioner's cause is not moot. In consequence of his conviction, he cannot engage in certain businesses; he cannot serve as an official of a labor union for a specified period of time; he cannot vote in any election held in New York State; he cannot serve as a juror. Because of these 'disabilities or burdens [which] may flow from' petitioner's conviction, he has 'a substantial stake in the judgment of conviction which survives the satisfaction of the sentence imposed on him.' *Fiswick v. United States*, 329 U.S. 211, 222 (1946). On account of these 'collateral circumstances' the case is not moot."

Thus, this Court has held, albeit in connection with Federal appeals and habeas corpus, that completion of sentence does not render the conviction moot, *i.e.*, a person convicted of a felony has sufficient interest in vindicating his constitutional rights although his sentence has been served. If therefore, as indicated hereinabove, a state court is under a constitutional mandate to provide a post-conviction process for a person then serving his sentence, it must likewise do so for a convicted felon who has completed his sentence. *This is a logical consequence of the holdings of this Court that the completion of the sentence does not remove the disabilities flowing from the conviction.*

C. The Issue of Mootness Is a Federal Question.

Furthermore, the issue of mootness of a constitutionally invalid conviction is itself a Federal question. Therefore, a holding of mootness by the state court may not preclude this Court from taking a contrary view. In *Liner v. Jasco, Inc.*, 375 U.S. 301 (1964), a state trial court, rejecting a defense of federal preemption, enjoined peaceful picketing at a construction site. The State Supreme Court affirmed on the dual grounds that the preemption defense had been properly rejected and that the cause had become moot by reason of the completion of construction pending appeal. This Court held that it was not bound by the state court's holding that the case was rendered moot, and that "the question of mootness is itself a question of federal law, upon which we must pronounce final judgment."

By virtue of the supremacy clause of the United States Constitution, state courts must, in the absence of a valid excuse, entertain and adjudicate federal claims. *Robb v. Connolly,* 111 U.S. 624, 637, 28 L. Ed. 542, 4 S. Ct. 544; *General Oil Co. v. Crain,* 209 U.S., 211, 228, 52 L. Ed. 754, 28 S. Ct. 475. Maine has no valid reason to refuse petitioner a hearing on his federal claims. The Maine statute, to the extent that it bars vindication of federal constitutional rights, is void as being repugnant to the federal constitution.

Conclusion.

The federal interest in the vindication of Fourteenth Amendment rights in state proceedings is, in many situations, adequately protected by the availability of federal habeas corpus. This is not so in the instant matter, as set forth hereinabove.* If Maine, therefore, may bar a remedy under the circumstances, no vehicle is available to petitioner to determine his constitutional claims.

The issue is gaining in importance because of the new requirements resulting from expanding concepts of federal procedural due process. Thus even in a *Gideon*-type** situation all avenues of relief would be cut off where a state conviction was involved. The matter is of great importance for all states which condition post-conviction relief on current service of sen-

*Note statutory restrictions on availability of federal habeas corpus in 28 U.S.C. Sec. 2241.

***Gideon v. Wainright,* 372 U.S. 335 (1963); see U.S. *ex rel.* *Durocher v. La Vallee* on retroactivity.

tence. The speedy payment of a fine or termination of sentence would foreclose review in states with Maine-type rules.

It is respectfully submitted that the petition for the writ of certiorari should be granted.

Respectfully submitted,

ELIOT B. FELDMAN,
MELVIN W. MILLER,
Attorneys for Petitioner.

June 1968.